

# MIOSHA

Michigan Occupational Safety and Health Administration (MIOSHA)  
Department of Labor and Economic Opportunity (LEO)

## AGENCY INSTRUCTION

DOCUMENT IDENTIFIER:  
MIOSHA-COM-16-2R1

DATE: June 5, 2020

### **SUBJECT: MIOSHA Field Operations Manual (FOM)**

- I. Purpose: To revise and update the MIOSHA Field Operations Manual (FOM) for Enforcement.
- II. Scope: This instruction applies agency wide.
- III. Reference: US Department of Labor, Occupational Safety and Health Administration [Field Operations Manual](#) CPL 02–00–164, dated April 14, 2020.
- IV. Distribution: MIOSHA Staff; Federal OSHA; S–drive Accessible; MIOSHA Messenger; and Internet Accessible.
- V. Cancellations: All previous versions of this agency instruction.
- I. Next Review Date. To be reviewed in three (3) years from date of issuance.
- II. History. History of previous versions include:
  - MIOSHA-COM-16-2, June 1, 2016
  - MIOSHA-MEMO-COM-06-1R5, November 22, 2013
  - MIOSHA-MEMO-COM-06-1R4, June 11, 2010
  - MIOSHA-MEMO-COM-06-1R3, April 6, 2010
  - MIOSHA-MEMO-COM-06-1R2, March 27, 2007
  - MIOSHA-MEMO-COM-06-1R1, October 25, 2006
  - MIOSHA-MEMO-COM-06-1, February 1, 2006
- III. Contact: [Barton G. Pickelman](#), Director
- IV. Originator: Barton G. Pickelman, Director  
In Consultation with the FOM Work Group  
Michigan Occupational Safety and Health Administration
- V. Significant Change. Federal OSHA updated its Field Operations Manual (FOM) in August 2, 2016, September 13, 2019, and April 14, 2020. As part of MIOSHA’s three–year review process, MIOSHA has reviewed and revised its FOM. For a complete list of significant changes, please see Appendix. Click for current FOM: [Field Operations Manual](#), as amended.

## **APPENDIX**

### **Significant Changes for 2020**

Corrected hyperlinks to agency instructions referenced in the FOM.

Page 3 – Jurisdiction – Coordination with Other Federal and State Agencies – added language that the operational status agreement between the United States Department of Labor and the Michigan Department of Labor and Economic Opportunity was amended to clarify that marine construction is included in its State Plan jurisdiction. Construction activities (e.g., bridge and pier construction, bulkhead construction, installation of sewage outfalls) occurring from a vessel are considered marine construction and are covered under various MIOSHA regulations.

Page 14 – updated Standards and Freedom of Information Act (FOIA) Section responsibilities to include MiWISH grants.

Page 17 – moved MIOSHA Communications Specialist under Consultation Education and Training (CET) Division's Structure.

Page 19 – added MIOSHA COVID-19 Hotline telephone number to the Agency Phone/Fax Numbers list.

Page 21 – updated General Industry Safety and Health Division (GISHD) Health District Map.

Page 27 – Retention of FOIA Files – updated FOIA responses are kept for one (1) year.

Page 27 – Subpoena – General, c – deleted the word "notes" from the list of information contained in the case file.

Page 27 – Subpoena – General, d – replaced reference to the Freedom of Information Act with "and other applicable laws or legal privileges" in this section.

Page 27-28 – Subpoena – Requirements of Subpoenas for Depositions/Trial Appearances (With or Without Records), b – added language, unless otherwise instructed by the attorney or court who has issued the subpoena, to this section.

Page 28 – Subpoena – Requirements of Subpoenas for Depositions/Trial Appearances (With or Without Records), c – added language, to the attorney in advance of the date of the appearance with instructions regarding their release. The Appeals Division will inform the MIOSHA staff member if records have been requested, to this section.

Page 28 – Subpoena – Requirements of Subpoenas for Depositions/Trial Appearances (With or Without Records), e – added language, motion to quash may be filed to relieve MIOSHA from the obligation to comply with the subpoena, to this section.

Page 29 – Subpoena – Preparation for Depositions/Trial Appearances, 8 – added language, at 5:00 p.m. in accordance with normal business hours, as well as excuse themselves, to this section.

Page 29 – Subpoena – Preparation for Depositions/Trial Appearances, 9 – added language, or request to provide the information off the record, to this section.

Page 29 – Subpoena – Notify the Office Upon Completion of Testimony, b – added language, investigation or, in the parentheses in this section.

Page 30 – Administrative Subpoenas Issued by MIOSHA – subpoenas may also be made by process server. Added reference to Agency Instruction MIOSHA-COM-14-1 [Process Servers for Delivery of Citations and Other Legal Documents](#).

Page 31 – Inspection/Investigation Types – Unprogrammed – added fatality/catastrophe to the types of inspections covered under the OSHA Information System (OIS) category.

Page 31 – Inspection/Investigation Types – Programmed – added language to include non-fatal accidents.

Page 33-34 – Unprogrammed Inspections – updated Definitions to include fatality/catastrophe, employer-reported referral (ERR), and accidents.

Page 35 – Unprogrammed Inspections – Added fatality/catastrophe to Unprogrammed Inspection.

Page 39 – Procedures for a Letter Complaint Inspection – added language explaining the complaint is being closed as a result of a satisfactory response from the employer, offering to discuss the disposition of the complaint, and how to obtain a copy of the employer's response through FOIA.

Page 39 – Unprogrammed Inspections – added Employer-Reported Referral (ERR).

Page 39 – Unprogrammed Inspections – added Accidents.

Page 42 – Non-Fatal Accidents – deleted Under no circumstance will non-fatal accidents be entered as an Accident in OIS.

Page 43 – MIOSHA's requirements for history searches were amended. The SO/IH and supervisor will conduct an establishment search by accessing the OSHA website and OIS.

Page 53-54 – Language regarding consultative activities versus enforcement activities was revised.

Page 65 – Voluntary Elimination of the Imminent Danger – replaced the word permanently with completely.

Page 78 – General – added language to include, documents and drawings. Also added drawings to the parentheses. Deleted language, forms and notes and also deleted notes from parentheses.

Page 78-79 – Case File Documentation – added language, Case File Diary Sheet. Deleted language in e., a diary sheet, chronology of actions taken, or both, regarding the case file.

Page 86 – Other-Than-Serious (OTS) Violations –added language that OTS violations of a MIOSHA rule must include a showing of an applicable rule, violation/noncompliance with the rule, employee exposure, and actual or constructive employer knowledge of the violative condition. See Step 4 in the section below regarding employer knowledge.

Page 99 – Egregious Violations – added language, Egregious violations must be approved by the MIOSHA director.

Page 106-107 – Penalties – added language, deviations from this guideline are allowed. Added a list of factors for consideration when penalty adjustments are not applied to achieve the deterrent effect.

Page 112 – Penalties – Limitations – amended language for good faith reduction and that it will be calculated separately for each inspection. After the classification and probability ratings have been determined for each violation, the adjustment factors shall be applied subject to a list of limitations.

Page 113 – Penalties – Penalty Adjustment (Reduction) Factors – Repeat – added a Note that if one (1) violation is classified as repeat, no reduction for good faith can be applied to any of the violations found during the same inspection.

Page 113 – Penalties – Penalty Adjustment (Reduction) Factors – Willful – deleted language, other-than-serious willful violations are not adjusted for good faith, size or history.

Page 113 – Penalties – Penalty Adjustment (Reduction) Factors – Size Reduction – added language, in the case file.

Page 114 – Penalties – Penalty Adjustment (Reduction) Factors – History Reduction – added language following, within the past three (3) years, for a construction inspection or within the past five (5) years for a general industry inspection.

Pages 117-118 – Penalties – Failure to Abate (FTA) – the calculation for failure to abate penalties was revised along with the Failure-to-Abate (FTA) Worksheet. Added language to Step 1: When a lower GBP is proposed, justification shall be documented in the case file. In no circumstance shall the proposed GBP be less than \$1,000. Updated language in Step 3: The penalty multiplier for the first failure to abate will be five (5). The penalty multiplier for the

second failure to abate will be 10. By the third failure to abate, a cease operations order should be considered. Revised language in Step 4: Proposed penalty: the penalty from Step 2 times the penalty multiplier from Step 3. A link to an interactive PDF FTA worksheet was added.

Page 120 – Penalties – Penalty Increase Factors – changed the name of the title of the table to Increase Factor Table for Serious Repeated Violations and Other–than–Serious with Greater Probability Repeat Violations.

Page 121 – Penalties – Other–Than–Serious with Lesser Probability– Larger Employers – deleted the last paragraph regarding adjustment size factor.

Page 121 –Penalties – Repeat Violations – updated the language for the Repeat Penalty Table for Other–than–Serious Violations with Lesser Probability to include, small employers who have 250 or fewer employees. Revised the table.

Page 121 – Penalties – Other–than–Serious Willful Penalty – deleted language from this section, No reduction factor will be applied.

Page 125 – Penalties – Other Regulatory Requirements – amended Gravity Based Penalty Regulatory Penalty Table to include regulatory citation for not performing electronic injury and illness submissions to federal OSHA.